

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9620 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR ALIAS LALABHAI JAYANTILAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 9620 of 2001
MR CL SONI for Petitioners No. 1-3
MR VIPUL PANCHOLI, APP for Respondent No. 1
NOTICE SERVED BY DS for Respondents No. 2-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/03/2002

ORAL JUDGEMENT

1. By means of this application under Section 482 of

CrPC, the petitioners- original accused, have prayed to quash and set aside the complaint being CR No. I. 64/2001 registered at Bhabhar Police Station, Bhabhar, District : Banaskantha for the offences punishable under Sections 366, 380 and 114 of I.P.Code.

2. It is the say of the petitioners that they are unnecessarily and illegally dragged into criminal prosecution on the false complaint filed by the father of petitioner No.3 Jignaben Mahendrakumar Thakkar. Complainant Arvindhbhai Shah has filed aforesaid complaint on 12.10.2001. It is the say of the petitioners that petitioner no.1 & 3 are the husband and wife and petitioner No.2 is the sister of petitioner No.1 who has married at Dharampur town with one Shri Anilkumar Thakkar prior to about three years and since then she is stayed in Dharampur. Since petitioner Nos. 1 & 3 were knowing to each other, they developed personal affection and love and decided to marry and ultimately got married in the temple at Valsad. It is specifically stated by petitioner Nos. 1 & 3 that they both being major, implemented their wish freely and got married. Their marriage was also registered with the Registrar of Marriage at Valsad on 10.10.2001. Petitioners have produced relevant documents at Annex. B & C in support of their say.

3. Mr. C.L.Soni, ld. counsel appearing for the petitioners has argued that as petitioner No.3 had selected petitioner No.1 as her husband and got married with him against wishes of her parents and so the father of petitioner No.3 filed concocted and false complaint and, therefore, the same should be quashed and set aside.

4. Initially when the matter was circulated for admission hearing, notice was issued and respondents were ordered to be served with notice of hearing and simultaneously, interim relief was also granted. On 14.12.2001, original complainant Arvindhbhai Shah, though was served, had opted not to appear before the Court and there is no formal resistance.

5. Ld. APP Mr. Pancholi has called for papers of investigation and after perusing the same and especially the birth date of petitioner No.3, has fairly submitted that on the date of incident, she was major and entitled to leave parental home as per her wish and will. Police has also collected evidence to that effect.

6. It is submitted by ld. counsel Mr. Soni for the petitioners that ingredients of offence punishable under

Section 366 of IPC, prima facie, are not at all there. The allegations against petitioner No.2 as to commitment of theft are also baseless and the same are made only with a view to see that both the petitioner nos. 1 & 3 can be arrested and petitioner No.3 can be persuaded by the complainant. Delay in filing FIR is also relevant, in view of the submission of ld. counsel Mr. Soni that the complaint is filed with an ulterior motive and the same is not bonafide. The fact that till date muddamal is not recovered, is also relevant.

7. On perusal of the FIR as well as papers of investigation, it clearly transpires that the allegations made in FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not, prima facie, constitute any offence or make out a case against the present petitioners. Even the evidence collected in support of the averments made in the complaint do not disclose the commission of any offence and make out a case against the present petitioners. On the contrary, it clearly transpires that the complaint is filed with an ulterior motive and with malafide intention and from the averments made in the complaint as well as evidence collected in support thereof, it clearly transpires that the same are inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the present petitioners. In this set of circumstances and in view of the ratio laid down by the Apex Court in the case of State of Haryana & Others v/s Bhajanlal & Others, reported in 1992 Supp. (1) SCC 335, the case of the present petitioners falls within the categories (1), (3) and (5) as enumerated in paras-102 & 103 of the said judgment. Under the circumstances, it would not be legal and proper to ask the petitioners to face the trial. On the contrary, this is a fit case where this Court should exercise its inherent powers under Section 482 of CrPC for quashing the complaint.

8. For the reasons aforesaid, application is allowed. Complaint being CR No. I.64/2001 filed by respondent no.2 herein viz. original complainant Shri Arvindbhai Shah against the present petitioners, registered at Bhabhar Police Station, Bhabhar, District : Banaskantha, for the offence punishable under Sections 366, 380 & 114 of IPC (Annex.E), as well as proceedings initiated on the strength of aforesaid complaint, are hereby quashed and set aside. Rule is made absolute. Yadi to the concerned Court.

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